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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 16

MARY B. JOHNSON,

Petitioner,

vs.

JAMES N. JOHNSON,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA, SPECIAL DIVISION A
and
BRIEF IN SUPPORT THEREOF

KARL F. STEINMANN,
Solicitor for Petitioner.

BERNARD W. RUBENSTEIN,
MANNES F. GREENBERG,
On the Brief.

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JAMES N. JOHNSON,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA, SPECIAL DIVISION A

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Karl F. Steinmann, as attorney for Mary B. Johnson, Petitioner, prays that a writ of certiorari be issued to review the decree of the Supreme Court of the State of Florida entered in the June Term, 1950, of the Court below.

OPINIONS BELOW

The opinion of the Supreme Court of Florida, Special Division A, is set forth in the certified transcript of the record from below; there was no opinion rendered by the lower Court, but the report of the Master is given in toto in the certified transcript of the record from below and directed to this Court.

JURISDICTION

The opinion of the Supreme Court of Florida now in question was rendered on December 12, 1950. The jurisdiction of this Court is invoked under Title 28 U. S. C. A., Section 1257 (3) and Supreme Court Rule 38, Paragraph 5A, in that the Federal Constitutional rights of the Petitioner are herein involved and the Constitutional issue with respect to those rights has been decided by the Supreme Court of Florida in a way not in accord with the applicable decisions of this Court.

QUESTIONS PRESENTED

The questions presented here are:

1. Does an a mensa et thoro divorce decree granted by a Maryland Court to a wife on the grounds of desertion preclude the subsequent consideration of a divorce decree by a Florida Court in favor of the husband based on the same facts and the same issues under Article 4, Paragraph 1 of the United States Constitution?

2. Since the Petitioner's property rights and rights in expectancy dependent upon her marital status are subject to being totally destroyed if the Florida decree remains unreversed, can this Court examine the evidence considered below on the point of residency in order to discover whether there was substantial evidence upon which the lower Florida Court could base its finding of jurisdiction and whether, under the circumstances of this case, the lower Florida Court gave the Petitioner a fair trial as is guaranteed her by the "Due Process" clause of the Federal Constitution Amendment 14?

THE SUPREME LAW OF THE LAND INVOLVED

Herein we contend that the Florida decree is in derogation of the Full Faith and Credit clause of the Federal Constitution, Article 4, Paragraph 1, and the dictates of that clause as are set forth in the cases of *Harding v. Harding*, 198 U. S. 316, and *Thompson v. Thompson*, 226 U. S. 551, and the decree of the lower Florida Court is in derogation of the "Due Process" clause of the Federal Constitution, Amendment 14.

STATEMENT

Mary B. Johnson, defendant in the case of James N. Johnson v. Mary B. Johnson, No. 123455B, filed in Dade County, Florida (R. 1-3), is a resident citizen of the State of Maryland and has been such all her life. The parties are the same as in the Maryland case wherein Mary B. Johnson was Plaintiff and James N. Johnson was Defendant. The said James N. Johnson was, prior to August 2, 1948, a resident and citizen of the State of Maryland, and has since that time variously claimed to be a citizen and resident of Maryland; Reno, Nevada, Charlotte, North Carolina; and of Miami, Florida (R. 250-255).

On the second day of August, 1948, the said James N. Johnson, then residing at 5305 Purlington Way, Baltimore, Maryland, deserted Mary B. Johnson and notified her by telegram from Chicago, Illinois that he was on his way to Reno, Nevada, for the purpose of securing a divorce (R. 21, 35). Desertion on the part of James N. Johnson was of that date found to exist by the Circuit Court No. 2 of Baltimore City, State of Maryland, which granted an a mensa decree to Mary B. Johnson on November 15, 1948 upon her Bill of Complaint previously filed. At the time this Bill of Complaint was filed, the said James N. Johnson

could not be found for service of process in the State of Maryland. Whereupon, the said Mary B. Johnson, pursuant to provision of Article 16, Section 16 as modified in the Public General Law of Maryland and pursuant to the decisions of the Court of Appeals of Maryland, applied for and was granted a receiver to impound the assets of James N. Johnson. James N. Johnson then appeared in the Maryland case, and, sought to dissolve the receivership (R. 38-41).

The decree of the Maryland Court, in deciding that James N. Johnson had without just cause abandoned the said Mary B. Johnson, also made provision for the support and maintenance of Mary B. Johnson and their son, Paul B. Johnson, and enjoined the defendant from disposing of assets located in Maryland (R. 16-19). This a mensa decree, pursuant to the usages and customs of the laws of the State of Maryland, reserves the wife's rights of expectancy in the husband's property upon his death and entitles her to dower in the real estate of her husband if he predeceases her and further entitles her to apply to the Court from time time to time for such alteration in the rights of support and maintenance as the circumstances of the parties warrant at the time of the application.

The lower Court in Maryland filed no opinion and the case was not appealed. A copy of the Maryland decree appears in the certified transcript of the record from below (R. 16-19).

Immediately upon the entry of the Maryland decree, the said James N. Johnson returned to Reno, and on November 18, 1948, three (3) days following the decree of the Maryland Court, signed a Bill of Complaint in Reno and made affidavit "that for more than six (6) weeks next preceding the commencement of this action the plaintiff has

been and now is a bona fide resident and domiciled within the County of Washoe, State of Nevada, and that he has been actually, physically, and corporally present in said county and state during all this time." (R. 247, 250).

On March 29, 1949 the said James N. Johnson filed a Bill of Complaint in Miami, Florida (Dade County) (R. 1-3), and therein made affidavit that the "plaintiff is a bona fide resident of Dade County and has resided in Dade County, Florida, for more than ninety (90) days next preceding the filing of this bill for divorce". Thus, this affidavit would place his residence in Florida as of December 29, 1949. In fact, the said James N. Johnson filed a declaration of domicile and citizenship on December 31, 1948 asserting that he has been a bona fide resident of the State of Florida since December 28, 1948 (R.-53). However, on December 30, 1948 the said James N. Johnson dismissed the Bill of Complaint which had been filed in Reno, Nevada on November 18, 1948. Hence, it will be noted that there is a conflict of date of residence in the papers filed in Miami, and of the date of dismissal of the Reno paper, which occurred while claiming to be a resident of Florida in the statutory period.

In any event, there can be no reconciliation between his testimony that he was a resident of Maryland on October 29, 1948 (R. 117, 236), and his affidavit filed in Reno on November 18, 1948 that he had been a resident of Reno six (6) weeks prior to that date and had been corporally present in Reno when he testified in Maryland on November 29, 1948.

The said Mary B. Johnson appeared by attorneys in the Florida case principally to claim that the proceedings in the Maryland Court was a bar to the action in the Florida Court and contended that the Maryland decree was entitled to

Full Faith and Credit under Article 4, Paragraph 1 of the Constitution of the United States, and hence, that the decree of the Florida Court must be in favor of the said Mary B. Johnson (R. 14-51). The said Mary B. Johnson denied the bona fide residence of the said James N. Johnson and the allegations of misconduct made by the said James N. Johnson which he claimed amounted to constructive desertion and mental cruelty. No fact alleged or proved by Johnson post-dated the Maryland decree.

The case was referred to the Master for the taking of testimony. Except for the evidence relating to Florida residence, all of the evidence that was presented by the said James N. Johnson was properly before the Maryland Court. All the evidence given before the Master related to the conduct of the parties while cohabitating and, hence, to a time prior to the Maryland decree (R. 288-296). The finding upon this evidence of the Maryland Court as to which party was at fault was asserted to be entitled to Full Faith and Credit, precluding the Master from making a contrary finding upon the evidence.

The issues which the said James N. Johnson raised in the Florida proceedings were necessarily decided by the Maryland Court. The separation which the said James N. Johnson claimed in the Florida proceedings to be the fault of Mary B. Johnson was the exact same separation that Mary B. Johnson had based her action in the Maryland Court, which found James to be the party who was at fault for the separation. Furthermore, in order to find as it did, the Maryland Court had to necessarily determine that the said Mary B. Johnson was free of fault, and, thus, free of constructive desertion; for under the Maryland law, she is only entitled to an a mensa divorce if she is free of cruelty, desertion, actual or constructive, and free of vicious conduct.

Your Petitioner, the said Mary B. Johnson, strenuously argued before the Master that the Maryland decree was entitled to Full Faith and Credit and precluded any other determination that went behind the date of that decree. She argued the Maryland decree was res judicata, under the Full Faith and Credit clause of the Federal Constitution, on all of the issues before the Master in the Florida proceedings. However, the Master declined to pass upon this question of the application of res judicata, except insofar as property rights fixed by the Maryland decree are concerned. He merely made a finding that Johnson was a bona fide resident of Florida and is entitled to an a vinculo divorce on the ground of cruelty. Such decree the Florida lower Court granted. The findings of the Master can be found in a certified copy of the proceedings below, which has been directed to this Court (R. 296-297).

This issue of res judicata was the grounds of appeal to the Supreme Court of Florida, which merely affirmed the action of the lower Court without opinion. It is to be noted that the Circuit Court in Dade County, Florida, filed no opinion as to the application of the res judicata doctrine which your Petitioner herein vigorously contended was a necessary consideration of the Court; and it is to be noted that the Supreme Court of Florida likewise rendered no opinion as to the application of the res judicata doctrine, which should have governed the case in the lower Court, which in turn, was bound by virtue of the Full Faith and Credit clause to follow the Maryland decree in toto.

Further, on information and belief, the said Mary B. Johnson claims that the customs, usages, and laws of the State of Florida require that in order to afford jurisdiction to the Florida Court, the Plaintiff therein must have been domiciled in Florida for a period of ninety (90) days preceding the Bill of Complaint. This ninety (90) day period

of residency gives the State the connection which is required between the State and the marital status in order for the State to affect the marital status. Only upon having this connection can the State act upon the marital status and the property rights dependent therein. If this connection is lacking, any action of the State upon the marital status is a denial of due process of law by State action; as a State court granting a severance of the marital status and affecting the property rights flowing from such status is State action. Therefore, Federal Constitutional rights of the parties as regarding their status and their property are dependent upon whether there exist this necessary connection between the State and the parties. As Constitutional rights depend upon a finding of such connection, the Supreme Court can review the basis of this finding in order to determine whether there was substantial evidence supporting this finding. Your Petitioner contends, as she contended in Supreme Court of Florida, that there was no substantial evidence, as seen by the certified copy of the record of the proceedings below, supporting the finding of the Master as to the issue of James N. Johnson's residency in Florida, and, hence, the jurisdictional requirements needed by the Florida Court were totally lacking; and, hence, the required connection between the State of Florida and the parties was non-existent (R. 286). To allow the decree of the Florida Court to stand and to deny the Petitioner her marital rights when there was not a sufficient connection between James N. Johnson and the State of Florida so as to give the Court jurisdiction over the marital status of the said James N. Johnson and your Petitioner would be an unreasonable denial to your Petitioner, Mary B. Johnson, of her right to due process of law.

Beside destroying Petitioner's rights in expectancy in James N. Johnson's property, your Petitioner's rights to

maintenance and support are rendered uncertain and subject to destruction if the Florida decree is allowed to stand. While granting to James N. Johnson an a vinculo divorce, the Florida decree specifically recognized and upheld the validity and effect of the maintenance and support provision in the Maryland decree. Hence, although the Florida Court recognized your Petitioner's right to continued support and maintenance by her husband, it is unclear whether such right now exists under the Maryland decree or under the Florida decree, or both. If such right merely exists under the Florida decree, it is doubted whether such rights can be enforced in the sister states, including Maryland, as to future payments under such decree. Thus, recognition of the validity of the Florida decree would have the possible effect of defeating your Petitioner's rights in property now under the jurisdiction of the Maryland Court to secure payment of future support and maintenance to your Petitioner. If your Petitioner loses her right to have James N. Johnson's property in Maryland subject to the jurisdiction of the Maryland Court, her means of enforcing her rights to maintenance and support will be seriously curtailed, if not, for all practical purposes, nullified, since it is doubted whether she would have the means of pursuing James N. Johnson from state to state in order to enforce the above right against him or his property.

Again, if the maintenance and support provision is considered as remaining and existing only under the Maryland decree, your Petitioner's right to support will be absolutely destroyed; for under the Maryland law, only a wife who is entitled to a divorce is entitled to alimony; and a wife against whom an a vinculo divorce is granted is not one who is entitled to a divorce in her own right.

In November, 1950, the said James N. Johnson again appeared in the Circuit Court No. 2 of Baltimore City, State

of Maryland, and claimed that the Florida decree is now binding on the Maryland Court, and, therefore, even though the Florida Court decreed that "Nothing in this decree shall be held or construed to relieve the Plaintiff in any manner from complying with the support and maintenance provision of that certain decree rendered by the Circuit Court of Baltimore City, State of Maryland, on the 15th day of November, 1948, in the case of Mary B. Johnson v. James Nelson Johnson, et al, divorce," that the said James N. Johnson is no longer obligated to pay support and maintenance to your Petitioner, Mary B. Johnson. After your Petitioner indicated that she would fully contest the validity of the Florida decree in the Maryland Court, the said James N. Johnson dismissed his petition in the Maryland Court. However, he has said that he will pursue every effort to defeat your Petitioner's status as his wife and her property rights flowing out of that status.

SPECIFICATIONS OF ERRORS TO BE URGED

The Supreme Court of Florida erred:

1. In affirming the ruling which failed to give the Maryland decree, which had decided who was at fault as of the date of that decree, Full Faith and Credit, the Court's action was in direct contradiction to the principles and holdings of the cases of Harding v. Harding, 198 U. S. 316, and Thompson v. Thompson, 226 U. S. 551, which cases present the exact situation as was present in the Florida Court below.

2. In holding by implication without reviewing the evidence that the said James N. Johnson had acquired a bona fide residency in the State of Florida, particularly as it is apparent from the record that the said James N. Johnson has always acted in bad faith in seeking to terminate absolutely his marital status with your Petitioner.

3. In refusing to review the evidence establishing the fact of James N. Johnson's ninety (90) day bona fide residence in Florida. That before the Florida decree can be given any effect, it must affirmatively appear by substantial evidence that the Plaintiff was a bona fide resident of Florida for ninety (90) days; that the Florida Supreme Court, for the purpose of determining whether the Florida decree has any effect within Florida or any effect in the sister states under the Full Faith and Credit clause, must review the record to determine whether there was substantial evidence to establish the necessary residence, since the Florida lower Court cannot sustain its jurisdiction by self-serving finding of jurisdiction unsupported by substantial evidence. Failing to review this evidence, the highest Court of Florida was in error.

REASON FOR GRANTING WRIT

The decision of the Supreme Court of Florida is directly contrary to the Supreme Law of the Land as laid down in the cases of Harding v. Harding, supra, and Thompson v. Thompson, supra. These Supreme Court cases hold unequivocally that an a mensa divorce on the grounds of desertion determines who is the party at fault at the time of the decree and is entitled to Full Faith and Credit in such a manner that no court of a sister state can go beyond that decree in order to relitigate the question of fault, when said question was necessarily litigated in both courts. Because the Supreme Court of Florida has decided the Federal question in a way not in accord with the applicable decisions of this Court, certiorari is certainly indicated and should be granted.

As the Federal Constitutional rights of your Petitioner are herein involved and depend upon the finding of fact that there exists the necessary connection between the State of

Florida and the marital status, which connection is based on the ninety (90) day residency of James N. Johnson, and as there is great doubt whether there was substantial evidence to sustain the finding of the lower Florida Court in this regard, certiorari again is clearly indicated and should be granted by virtue of the principles laid down in *Craig v. Harney*, 331 U. S. 367, and *Pennecamp v. Florida*, 328 U. S. 331, in regard to this Court's right to review the evidence supporting a finding of fact when a Constitutional right depends upon the finding of that fact.

CONCLUSION

Your Petitioner respectfully prays that this Petition of Certiorari should be granted.

Respectfully submitted,

KARL F. STEINMANN,
Solicitor for Petitioner.

IN THE

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No. ____

MARY B. JOHNSON,

Petitioner,

vs.

JAMES N. JOHNSON,

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA, SPECIAL DIVISION A

Karl F. Steinmann, on behalf of Mary B. Johnson, files this Brief in support of her petition for a writ of Certiorari to be directed to the Supreme Court of Florida.

OPINIONS BELOW

The opinion of the Supreme Court of Florida, Special Division A, is set forth in the record of the proceedings below, which record is directed to this Court. There was no opinion rendered by the lower Florida Court, but the report of the Master is given in toto in the record of the proceedings below.

JURISDICTION

The opinion of the Supreme Court of Florida now in question was rendered on December 12th, 1950. In that decision, the Florida Court "has decided a Federal question * * * in a way probably not in accord with applicable decisions of this Court". Specifically, the Florida decision was contrary to the Supreme Court decisions rendered in *Harding v. Harding*, 198 U. S. 316, and *Thompson v. Thompson*, 226 U. S. 551, which set forth the applicable law to the issues as they were before the Florida Court. Hence, the jurisdiction of this Court in granting a Writ of Certiorari in this case is invoked under Title 28 U. S. C. A. Sec. 1257 (3), and under Supreme Court Rule 38, Paragraph 5A.

Also, as property rights and rights in expectancy were, by the Florida decision, destroyed or endangered by destruction without granting your Petitioner her right to "due process of law", the jurisdiction of this court is invoked again under Title 29, Section 1257 (3) U. S. C. A.

STATEMENT OF THE CASE

On March 29, 1949, the Respondent, James N. Johnson, filed a Bill of Complaint in Miami, Florida (Dade County) (R. 1-3), seeking a divorce on the grounds that theretofore the said Mary B. Johnson, your Petitioner herein, secured a divorce in another State to wit, the State of Maryland. Thereafter, Plaintiff amended his Bill of Complaint to include two additional grounds for divorce, extreme cruelty and habitual indulgence by the Defendant, Mary B. Johnson, in a violent and ungovernable temper (R. 4-10). Defendant, Mary B. Johnson, filed her answer to the Bill of Complaint as amended, denying all of its material allegations including the alleged bona fide Florida residence of the Plaintiff (R. 11-13). Subsequently, Defendant, Mary B. Johnson, amended her answer pursuant to Court order to in-

clude therein the defense of res judicata in so far as every issue alleged in the Florida Court was raised and decided by the Maryland Court, which had previously decreed to the said Mary B. Johnson a divorce a mensa et thoro on the grounds of desertion of her husband, James N. Johnson (R. 14-51). Upon the taking of testimony before the Master, it was found that no evidence, except that as relating to James N. Johnson's Florida residency, was produced which concerned happenings subsequent to the date of the Maryland decree. And further, no new issues were raised in the Florida Court, except as to James N. Johnson's Florida residency, than those that were necessarily before and decided by the Maryland Court. In order for the Maryland Court to have granted your Petitioner a divorce on the grounds of her husband's desertion, the Court, under the Maryland law, necessarily had to decide that your Petitioner was absolutely free of fault. It necessarily found that she was free of cruelty, for, if guilty of such conduct, she would have been barred from being granted an a mensa et thoro decree. Also, and further, the Court necessarily found that she was free of "habitual indulgence in a violent and ungovernable temper", for, if guilty of this conduct, she would be considered under the Maryland law guilty of constructive desertion and the party who was the fault of the desertion. Hence, the Maryland decree was res judicata, except as to residency, as to all issues before the Florida Court as the proceedings in Florida were to be nothing more than a redetermination of the issues decided by the Maryland Court. However, the Master made no determination as to the application of the defense of res judicata, except insofar as it related to property rights as determined by the Maryland decree (R. 396). He granted James N. Johnson an a vinculo on grounds of cruelty. Consequently, the Master and the lower Florida Court did not give to the Maryland decree the effect that it was entitled under the Full Faith and Credit

clause. Consequently, the action of the Florida Court was in derogation of the Full Faith and Credit clause of the Federal Constitution.

Further, the Master below found that Mr. Johnson was a bona fide resident of Florida as of December 28th, 1949, merely upon the following evidence:

1. That James N. Johnson opened a bank account with the First National Bank of Miami, on December 27th, 1948, and had made deposits in January, February, April and May of 1949.

2. James N. Johnson filed a Declaration of Domicile and Citizenship on December 31st, 1948, asserting that he has been a bona fide resident of the State of Florida since December 28th, 1948. The Notary Public took his acknowledgement on December 28th, 1948.

3. James N. Johnson obtained a Florida driver's license for 1949.

4. Two witnesses testified as to James N. Johnson's being in Florida since December 29th, 1948 (R. 285-287).

As opposed to this evidence, there was evidence that Mr. Johnson had gone to Nevada in August of 1948 with the intention of filing a suit for divorce against Mary B. Johnson. He signed a bona fide Will designating Nevada as his residence. In October, 1948, he testified, in the suit for divorce brought by his wife, that he was a resident of Maryland (R. 117, 236). On November 18th, 1948, he instituted proceedings in Nevada against his wife, signing an affidavit that he was a resident of Nevada (R. 247, 250). Such affidavit was on record in Nevada until December 30th, 1948, two days after he had declared his intention of being a bona fide resident of Florida. Also, there is evidence that the said James N. Johnson subsequently resided in various

places outside the State of Florida (R. 98-120). It is to be noted that testimony before the Master of the Florida Court was fully marked with inconsistencies and uncertainties.

Hence, we submit that the Master in the lower Court in finding James N. Johnson to be a bona fide resident of Florida for ninety days prior to his filing his Bill of Complaint did not act upon substantial evidence showing such required residency, in light of the previous and subsequent conduct of the said James N. Johnson in trying to defeat in bad faith the property rights of your Petitioner growing out of the marital status. If such substantial evidence was not present, the lower Court had no basis on which to render a divorce decree and thereby effect and directly or indirectly destroy the property rights of your Petitioner. To effect and destroy the property rights of your Petitioner without having jurisdiction over the marital status is denying your Petitioner "due process" of law, since there is no connection between the State Court and the subject matter which it seeks to effect. Hence, we contend the Supreme Court of Florida should have declared the decree of the lower Court null and void, as that decree was rendered before there existed sufficient evidence to sustain its jurisdiction.

If the Florida decree is allowed to stand, not only will your Petitioner's rights in expectancy in James N. Johnson's property be destroyed but also her rights to support and maintenance under the Maryland decree will be subject to destruction, even though the Florida Court incorporated within its decree the Maryland provision for support and maintenance of your Petitioner (R. 305). Your Petitioner does not know whether such provision for support and maintenance falls under the Florida decree, or remains in force under the Maryland decree, or is considered an

order of both jurisdictions. If such provision is now considered as falling alone under the Florida decree, there is great uncertainty whether these provisions can be enforced in Maryland as to future payments. Thus, there is a possibility that the property now within the jurisdiction of the Maryland Court under an injunction granted in favor of your Petitioner to secure her payments under the Maryland support and maintenance provision is to be removed from within the control of the Maryland Court. The said James N. Johnson had filed a Petition to dismiss this injunction but for reasons unknown, voluntarily dismissed his Petition. However, he said he would make every effort to defeat your Petitioner's property rights growing out of the marital status.

Under such circumstances, we submit that it is proper for this Court to also consider the evidence that was presented in the lower Florida Court to establish James N. Johnson's required residency in Florida in order to see if the Florida Court was acting without jurisdiction and thus rendered a decree which is not effective within Florida, or in the sister states under the dictates of the Full Faith and Credit clause.

SPECIFICATIONS OF ERRORS TO BE URGED

The Supreme Court of Florida erred:

1. In affirming the ruling which failed to give the Maryland decree, which had decided who was at fault as of the date of that decree, Full Faith and Credit; the Court's action was in direct contradiction to the principles and holdings of the cases of *Harding v. Harding,* 198 U. S. 316, and *Thompson v. Thompson,* 226 U. S. 551, which cases present the exact situation as was present in the Florida Court below.

2. In holding by implication without reviewing the evidence that the said James N. Johnson had acquired a bona fide residency in the State of Florida, particularly as it is apparent from the record that the said James N. Johnson has always acted in bad faith in seeking to terminate absolutely his marital status with your Petitioner.

3. In refusing to review the evidence establishing the fact of James N. Johnson's ninety day bona fide residence in Florida. That before the Florida decree can be given any effect, it must affirmatively appear by substantial evidence that the Plaintiff was a bona fide resident of Florida for ninety days; that the Florida Supreme Court, for the purpose of determining whether the Florida decree has any effect within Florida or any effect in the sister states under the Full Faith and Credit clause, must review the record to determine whether there is substantial evidence to establish the necessary residence, since the Florida lower Court cannot sustain its jurisdiction by self-serving findings of jurisdiction unsupported by substantial evidence. Failing to review this evidence, the highest Court of Florida was in error.

ARGUMENT

I.

Res Judicata Under the Full Faith and Credit Clause.

We will conclusively demonstrate that the facts and issues in both the Maryland court and the Florida court were identical and that the Florida court, in refusing to recognize the Maryland decree, in favor of Mrs. Mary B. Johnson, your Petitioner, as precluding it from making an adverse determination and in granting a decree in favor of Mr. James N. Johnson, rendered a decree contrary to the facts, holdings, and decisions of the cases of *Harding v. Harding*, 198 U. S. 316, and *Thompson v. Thompson*, 226 U. S. 551,

which laid down the dictates of the Full Faith and Credit clause concerning the recognition by sister states of an a mensa divorce.

That the evidence in both cases was identical, except in so far as the question of Florida residency is concerned, is seen from a glance at the Florida record (CF Master's findings, R. 288-296). All evidence given before the Florida court related to the conduct of the parties while cohabitating and, hence, to a time prior to the Maryland decree. All such evidence was properly before and considered by the Maryland court. The finding upon the evidence of the Maryland court as to which party was at fault was final, and to allow the court of a sister state to upset such a finding would be in complete derogation of the Full Faith and Credit clause of the Federal Constitution.

Further, the issues before both courts were identical. First, the question of who deserted whom at a time prior to the date of the Maryland decree was an issue in both cases. The separation, which James N. Johnson claimed in the Florida court was caused by Mary B. Johnson, was the same separation that Mary B. Johnson based her claim in the Maryland court, which found James N. Johnson to be the party who was at fault for that separation.

As to the issue of cruelty specifically: In order for the Maryland court to have granted an a mensa decree, it had to find that Mary B. Johnson was free from cruelty, as the Maryland court will not grant a divorce where the two parties are equally at fault. A divorce a mensa will not be granted when the plaintiff has been guilty of conduct that would entitle the other party, if innocent, to a divorce. The above rule is also last stated in the case of *Dougherty v. Dougherty*, 187 Md. 21 at p. 30, 48 A. 2d 451:

> "* * * Where it appears that the complainant is guilty of recrimination, it is not only the right, but the duty of the Chancellor to refuse a divorce although the defense of recrimination is not formally pleaded. (Earlier Maryland cases cited). Following the Mosaic and Cannon law, the ecclesiastical courts refused to grant a divorce when the husband and wife were guilty of some offense which constituted a cause of divorce, whether the offenses were similar or not * * * It is clear that a divorce to one of two equally guilty spouses is just as definitely against the provisions and policy of the law as any other divorce which the law forbids."

Also, see *Boyd v. Boyd*, 177 Md. 687, 11 A. 2d 471. Therefore, in granting an a mensa divorce for desertion, the Maryland court by necessary implication decided that Mary B. Johnson was absolutely free of cruelty on her part. Also, cruelty on the part of Mary B. Johnson would make her guilty of constructive desertion (*Kruse v. Kruse*, 179 Md. 657, 22 A. 2d 475) of which the Maryland court found her free. Therefore, the Maryland decree was res judicata on the question of cruelty and entitled to Full Faith and Credit on this point, and as James N. Johnson relied on no subsequent act of cruelty (the finding of such subsequent act of cruelty being almost, if not completely, inconceivable, as the parties were separated), the Florida court had nothing on which to act and nothing on which to pass its decree.

What has been said as to cruelty necessarily applies to violent and ungovernable temper on the part of Mary B. Johnson. Such conduct in Maryland would be considered vicious conduct and grounds for divorce under Article 16, Section 41 of the Maryland Code. Also, such conduct causing the other spouse to discontinue cohabitation would constitute constructive desertion. It is to be noted that the lower Florida court in ruling that Mary B. Johnson had deserted James N. Johnson made a finding, by implication,

that Mary B. Johnson was guilty of constructive desertion. However, the Maryland court found her free of vicious conduct so as to: (1) Render her free of constructive desertion and (2) Render her not guilty on such grounds so as to recriminate her and prevent her from seeking the a mensa divorce that was granted to her.

Thus, even if taking a strict approach to the application of res judicata, we find in the case before us that the issues that were raised in the Florida court were necessarily decided by the Maryland court. The Maryland decree being a final determination of the status of the parties as of its date, must be recognized by the Florida court, as well as any other court, under the Full Faith and Credit clause as res judicata of every issue and matter as to conduct of the parties raised in the subsequent Florida action.

Not only will a review of the authorities which follow demonstrate conclusively that the Maryland decree in question is entitled to Full Faith and Credit and totally precludes a court of a sister state from going beyond that decree, but it will be found that the action taken by the Florida court herein was contrary to the dictates of the Full Faith and Credit clause as already laid down in the cases of *Harding v. Harding* and *Thompson v. Thompson, (supra)*. In *Harding v. Harding, (supra)*, the wife acquired a separate maintenance decree in Illinois by virtue of the husband's consent to the decree of the court, which decree was based on the grounds of desertion. Subsequently, the husband appealed, as the lower court did not expressly recognize the falsehood of the other charges in the bill of complaint. Before this appeal was effected, the husband instituted proceedings in California for divorce on the grounds of willful desertion. The appeal in Illinois was decided against the husband. In the California court the husband introduced some testimony that was taken in the Illinois court. The California

court found for the husband and determined that the wife deserted him without just cause. The Supreme Court of the United States held that the California court had wrongly denied Full Faith and Credit to the Illinois decree. The court said:

> "No principal is better settled than that where a question proper for judicial determination is directly put in issue and finally determined in a legal proceeding by a court having competent authority and jurisdiction to hear and determine the same. Such decision and determination of the question would be final and conclusive upon the parties and their privities and in all future litigation between them in which the question arises, so long as judgment remains unreversed and is not set aside.
>
> "* * * That the issue of willful desertion present in the divorce action was identical with the issue of absence without fault presented in the Illinois maintenance suit, is manifest."

The Supreme Court then cited a Massachusetts court holding that a separation legalized by judicial decree was a conclusive determination that the same separation was not a willful desertion.

In the *Thompson* case the facts were: In September, 1907 H got an a mensa divorce from W in the Virginia court on the grounds of her abandonment in June of the same year. Shortly thereafter W sought an a mensa divorce in the District of Columbia court on the grounds of cruelty and constructive abandonment upon the same facts that were litigated in the Virginia court, in which W did not appear. The Virginia decree was held entitled to Full Faith and Credit and, therefore, is res judicata as to the suit in the District of Columbia. It was said that as the Virginia decree discloses that W was at fault:

> "It is plain that such decree forecloses any right of the wife to have alimony or equivalent maintenance from her husband under the law of Virginia."

In other words, W was precluded from obtaining a divorce with or without alimony provisions on grounds which existed prior to the Virginia decree.

It is to be noted that in the Thompson case that the Virginia limited divorce was held to bar the wife from obtaining an a vinculo divorce in another jurisdiction on nominally different grounds, but which grounds had existed prior to the Virginia decree. These two above Supreme Court cases are the basis of the proposition laid down in 27 C. J. S. 830:

> "A judgment or decree in a divorce suit is conclusive in any state action between the parties as to all the facts directly in issue and actually or necessarily determined therein."

In the Thompson case, the question of cruelty on the part of the husband not only could have been litigated in the Virginia court, but was necessarily in issue as it was necessarily determined that he was free of constructive desertion, and, hence, the wife was subsequently precluded from raising that issue again in the District of Columbia. Hence, the Maryland decree which, as seen above, necessarily determined both the issues of desertion and cruelty, was just as much entitled to Full Faith and Credit in the Florida court as was the Virginia decree in the Thompson case entitled to Full Faith and Credit in the District of Columbia. Being so entitled to recognition under the Full Faith and Credit clause, the Maryland decree absolutely precluded the Florida court from going behind that decree (the Maryland decree) and upsetting it.

Freeman on Judgments (5th Ed.) Vol. 3, P. 2972, Sec. 1142, states the law as follows:

> "A limited divorce is as much entitled to Full Faith and Credit under the Constitution or principles of international comedy as an absolute one. A wife's decree of separate maintenance in another state is conclusive as to every matter adjudicated by it in harmony with the general rules as to what is adjudicated by such decree and its effect in a subsequent suit for divorce. If it is adjudicated that she was not guilty of cruelty, or that he was guilty of cruelty, it is res judicata on this issue. If the decree was on the grounds of abandonment by the husband, it is conclusive of this fact. If he consented to a decree on a stipulation that she was living separately from him on legal causes, this was conclusive in his subsequent suit for divorce in another state. A decree of divorce a mensa in favor of the husband is likewise entitled to the same effect elsewhere as it is where rendered. A decree denying relief in a suit for divorce a mensa is conclusive in a subsequent divorce suit of all issues adjudicated. Thus, a finding against a claim of cruelty is res judicata in the husband's suit for desertion."

We submit with the utmost of certainty that since issues of cruelty and desertion were necessarily decided by the Maryland court, the Maryland decree, being a decree of final determination, must be recognized by Florida as well as every other sister state; and, even upon taking the strict approach to the doctrine of res judicata, i.e., the issues raised in both suit must be identical, the Maryland decree precluded the Florida court from hearing the cause which was before the Florida court and upon which the Florida court granted an a vinculo in favor of James N. Johnson.

There are many cases decided by the highest courts of the various sister states holding to be the law the same principles that are set forth by the authorities given above.

Such cases are too numerous to mention herein, but they are listed in our Brief that was submitted to the Supreme Court of Florida, which Brief will be found in the record from below. However, it is to be noted that among the cases following the above authorities are two recent Florida decisions, viz., *Bagwell v. Bagwell*, 153 Fla. 471, 14 So. 2d 841, and *Gordon v. Gordon*, 160 Fla. 838, 36 So. 2d 774.

Many cases have placed the rationale, by which a first divorce decree bars a second divorce decree upon grounds existing at the time of the first decree, upon the theory of estoppel. This theory merely says that not only are the parties in the first suit barred from again raising the issues litigated in the first suit, but they also are stopped from raising any issue that could have been litigated in the first suit. 27 C. J. S. 829 states the proposition in this manner:

> "A judgment on the merits in a divorce action, when rendered by a court of competent jurisdiction, is a bar to every issue which in fact was or in law might have been litigated therein to a later proceeding upon the same cause between the same parties."

Even putting the proposition in broader terms is 4 A. L. R. (2nd) P. 114, where it is said:

> "Even though the causes of action involved in two successive divorce suits are not the same because the grounds on which the divorce is sought are not the same, the former judgment of the sister state denying a divorce has been held to bar another divorce suit by the same plaintiff where the ground on which the suit is based was available at the time of the prior suits, but was not litigated or determined therein."

This speaks in terms of a dismissal of the first suit purely because the annotation concerns only the effect of a dismissal of the first suit. But, the same holds true when one party

has been granted affirmative relief. The following cases can be cited to support the above proposition: First is the case of *Zuckerburg v. Zuckerburg*, 188 Md. 428, 53 A. 2d 20, wherein a decree was granted on January 11, 1944 in favor of the wife on the grounds of the husband's desertion. In February, 1945 an order was made by the court extending payment of alimony. It was held that this order of February, 1945 was an adjudication that the husband was the party who is guilty of desertion as of the date of that order, February, 1945. The Court said:

> "All questions as to who was responsible for the separation of the parties before February 15, 1945 have been adjudicated in favor of the wife. The Chancellor in the instant case should not have gone behind the decree of Chancellor O'Dunne of February 15, 1945, and the decree of Chancellor Smith of January 11, 1944, to determine who was responsible for this separation up until February 15, 1945. To allow him to do so would allow him to review the decree of Chancellors Smith and O'Dunne, and this cannot be done."

Of course, in this case, only the grounds of desertion were expressly involved in both suits. But, the court went on to say:

> "The mere fact that a wife has obtained a divorce a mensa et thoro from her husband is not by itself sufficient defense to denying a husband a divorce a vinculo matrimonii *from the wife if her actions since the divorce a mensa et thoro are sufficient to entitle the husband to a divorce a vinculo matriomnii.*"

Thus, to entitle the husband, who is in the position of James N. Johnson after the Maryland decree of November, 1948, to a divorce, grounds must exist subsequent to the divorce granted in favor of his wife. This proposition seems to be well settled for the court to have gone into this matter further. Upholding, demonstrating, and acting upon the

theory of estoppel is the case of *Ashman v. Ashman,* (Ark.), 94 S. W. 2d 1033; the wife obtained a separate maintenance decree in Illinois. The husband was subsequently freed from alimony due to the Illinois statute. It is held that the decree still decides who is at fault and bars any subsequent suits on grounds existing prior to the Illinois decree.

Also, there is the case of *Bowen v. Bowen,* 219 Iowa 550, 258 N. W. 883. The wife in 1932 acquired separate maintenance from a court in Illinois. The decree was granted on the grounds of desertion. The husband then filed suit in Iowa. It is held that the Illinois decree was res judicata as it was the policy of the court to have an end to litigation, and the Full Faith and Credit clause requires that effect be given to judgments of sister states that have previously decided the issues brought before the court. It is said that the Illinois decree decided all issues which might have been litigated.

The principle of estoppel as applied to the raising of issues in subsequent court actions was set forth in the early Supreme Court case of *Beliot v. Morgan,* 7 Wall 619, 19 L. Ed. 205, 206, quoting from *Henderson v. Henderson,* 1 Hare 115:

> "* * * In trying this question, I believe I state the rule of the court correctly that where a given matter becomes the subject of litigation, and of adjudication, by a court of competent jurisdiction, the court requires the parties to bring forward their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in regard to a matter which might have been brought forward as a part of the subject in contest, but which was not brought forward, only because they have by negligence, inadvertence, or even accident omitted a part of their case. The plea of res judicata applies, except in special cases, not only to points upon

which the court was required by the parties to form an opinion in pronouncing judgment, but to every point which properly belongs to the subject of litigation, in which the parties, exercising reasonable diligence, might have brought forward at that time.

"A party can no more split up defenses than indivisible demands and present them by piecemeal in successive suits growing out of the same transaction."

In the cases which talk of the theory of estoppel, it is held that the estoppel arises from the Full Faith and Credit clause and that the Full Faith and Credit clause dictates that the decree or judgment of the first state must be given such recognition that a court of a second state cannot go beyond the previous decree or judgment for any purposes of investigation. The decree or judgment of the first state is final and conclusive as to the question of who is at fault at the time that it was rendered and precludes a redetermination of that issue. No court thereafter has the right or the power to hear an alleged cause of action of divorce arising previous to the date of the first decree. Regardless of whether we herein rest on the theory of estoppel or the theory of res judicata, if there be any difference between the two theories, or upon both theories, the Maryland decree granting Mary B. Johnson an a mensa divorce from James N. Johnson must be given Full Faith and Credit and precludes any court of any sister state from hearing and re-adjudicating any cause arising prior to the date of the Maryland decree. The Florida court, hearing and re-adjudicating only causes arising prior to the date of the Maryland decree, heard by the Maryland court, was, therefore, in error.

It would be against the purpose of the Federal Constitution to mold a more perfect union and, more specifically, against the purpose of the Full Faith and Credit clause to

allow the Florida decree to remain in effect. To allow a relitigation on the part of the Florida court in order to effect its own policy without regard to those of the sister states would facilitate the seemingly current trend towards social upheaval as far as marital relations are concerned. It is obvious from past performances, as well as the present one, that the courts of Florida are more concerned with promoting the commercial policy of the state rather than to foster or protect or even govern the marital status of its own citizens. In the case at hand, the Florida court made no bona fide decision, and, apparently, no decision whatsoever, in accordance with the law and policy compelling it to respect the policies of its sister states, which respect is required by the Full Faith and Credit clauses; no attempt was made to give effect to the Maryland decree. The law and policy of Florida, rather than the Supreme Law of the Land, was held supreme. Furthermore, from a glance at the Florida cases, it is apparent that either the Florida courts are confused as to what the law of Full Faith and Credit requires, or disregard it completely. In the recent case of *Gordon v. Gordon*, 36 S. 2d 774 (Florida, 1948), the Florida court held that a dismissal on the merits of a divorce action brought by the wife in a sister state upon the charges of indignities to her person is under the Full Faith and Credit clause res judicata of the issues raised in the wife's suit for a divorce on the grounds of extreme cruelty where the character of the evidence produced is essentially the same as that relied on in the suit in the sister states, and in *Bagwell v. Bagwell*, 14 S. 2d 841, it was said that the identities of facts necessary for the granting of a divorce under the pertinent statutes of the second state "is the test of the identity of the issues." Clearly, under these two cases an entirely different result should have been reached in the Florida court, for, as seen above, the evidence and the

issues were identical in both the Maryland and the Florida courts. The same can be said of the case of *Coleman v. Coleman*, 157 Fla. 471; 26 So. 2d 843, wherein the result when read with the Gordon case and the Bagwell case seems unexplainable. If any explanation were given of the results of the above Florida cases, or if any proposition were to be obtained from an analysis of these cases, that proposition would be solely this: That the Florida court is giving merely lip service to the dictate of the Full Faith and Credit clause, and in a poor fashion at that. Another indication of the correctness of this proposition is the fact that the Supreme Court of Florida rendered absolutely no opinion as to the correctness of the lower court's decree in favor of James N. Johnson, which, in turn, did not even consider any application of the Full Faith and Credit clause. Under these circumstances, it would be detrimental to the harmony which has existed between the states, as well as contrary to the dictate of the Full Faith and Credit clause of the Constitution, to allow the Florida decree in question to stand. Again, we reiterate strong contention that the Florida decree is not only erroneous, but utterly void, as the Florida court had absolutely no power to relitigate the issues which James N. Johnson brought before it, and, therefore, such decree is entitled to no recognition.

The petition for a writ of Certiorari should be granted in order that an affirmative ruling may be made as to the invalidity of the Florida decree.

II.

Review of the Evidence Supporting the Finding of the Jurisdictional Fact.

If the present Florida decision is allowed to stand, your Petitioner's rights in expectancy, dower rights and rights to maintenance and support will be destroyed or subject to

total destruction. Hence, property rights protected by the Due Process of Law clause of the Federal Constitution, Amendment 14, are herein involved. In order for the Florida Court to effect and to cause alteration or destruction of property rights dependant upon marital status, the Florida Court must first acquire adequate jurisdiction over the marital status; for if such jurisdiction is lacking, there is no basis on which the Florida Court can act in order to effect either the marital status or the incidents thereof. The jurisdiction necessary in order that the Court may act is at least the domicile of one party, which domicile may be termed "a jurisdictional fact". As the property rights herein discussed are dependent upon the existence of the necessary jurisdictional fact, this Court can review the evidence supporting the alleged finding of that jurisdictional fact in order to determine whether there was an adequate basis on which the State Court could act in the manner as the Florida Court did below.

That the Petitioner's rights in expectancy and dower will be destroyed if the Florida decision is allowed to stand is obvious. Under the a mensa decree rendered by the Maryland Court, she is still entitled to all rights flowing from the marital status. In *Roberts v. Roberts,* 160 Maryland 513, 154 A. 95, it is said: "A decree of divorce a mensa et thoro does not dissolve the marriage bond, but merely suspends the right of cohabitation, and has no effect on the property rights of either spouse". However, an a vinculo divorce under Maryland law has the effect of not only severing the marital bond, but also destroying the property rights incident to and flowing out of the marital status. In *Crise v. Smith,* 150 Md. 323 at page 326, 133 A. 110, it is said: "It is true that, as a general rule and independent of statute, a divorce a vinculo ends all rights of either spouse dependent on marriage, and not actually vested, as courtesy, dower

and property rights under status of distribution * * *" Hence, the Florida a vinculo in favor of James N. Johnson would defeat the rights in expectancy and dower rights of your Petitioner.

Whether the Florida Court had such power to effect the above change is a question of jurisdictional fact, the finding of which is subject to review upon the evidence by this Court under the cases of *Craig v. Harney,* 331 U. S. 367 and *Pennecamp v. Florida,* 328 U. S. 331. In *Craig v. Harney,* it was said: "In a case where it was asserted that a person has been deprived by a State Court of a fundamental right secured by the Constitution, an independent examination of the facts by this Court is often required to be made". (Cases cited therein). The Court then went on to examine the evidence in order to discover if there was present in that case an infringement on the right of freedom of speech, a right secured by the Constitution. In *Pennecamp v. Florida,* 328 U. S. 331 at page 345, Mr. Justice Reed said this: "While the ultimate power is here to ransack the record for facts in Constitutional controversy, we are accustomed to adopt the result of the State Court's examination. It is the findings of the State Courts on undisputed facts or the undisputed facts themselves which ultimately furnish the basis for our appraisal of clean violation of Federal Constitutional rights". Thus, we have again a recognition that it is within this Court's province to re-examine the evidence when rights protected by the Federal Constitution are in controversy. Mr. Justice Frankfurter's opinion in the Pennecamp case further suggests that a re-examination of the evidence can be made in order to determine the validity of the State Court's findings when a Federal Constitutional right is dependant upon the outcome of said finding. Mr. Justice Frankfurter, in his dissenting opinion in the Craig

case, states: "A state cannot by torturing facts preclude us from considering whether it has thereby denied a Constitutional right".

We herein contend that the lower Florida Court, in finding Mr. James N. Johnson to be a bona fide resident of the State of Florida, tortured the facts so as to find that it could dissolve his marital status with your Petitioner, and destroy her rights incident to that status. The record will show that Mr. Johnson's testimony before the Florida Master was saturated with uncertainties and inconsistencies, and answers in the words: "I don't remember" (R. 110-121). These "I don't remember" 's refer to his attempts to establish a Nevada residence. The evidence relied on by the Master in supporting his finding of Mr. Johnson's bona fide residence is totally inconclusive and extremely meager (R. 285-287). The past conduct of Mr. Johnson in attempting to secure a Nevada divorce and in subsequently traveling from state to state should have alerted the Master to the fact that the Florida divorce sought by Mr. Johnson was not sought in good faith. The evidence of a mere attempt on the part of Mr. Johnson merely to defraud your Petitioner of her marital rights was not even considered by the Master in making his finding. We submit that as the Florida Court, by its decree, destroyed the marital rights of your Petitioner, which rights are protected by the Federal Constitution as property rights, upon a finding unsupported by substantial evidence, this Court can review the evidence presented in the lower Florida Court in order to determine whether the finding of the Master was valid.

Not only will the rights in expectancy and dower be destroyed if the Florida decree is allowed to stand, but also will your Petitioner's rights in maintenance and support be destroyed or subject to complete destruction. As pointed

out in our Petition, we do not know whether the effect of the incorporation of the Maryland provision for the support and maintenance of your Petitioner within the Florida decree has the effect of making that provision part of the Florida decree or whether that provision remains existing under the Maryland decree alone, or whether such provision is to be considered a part of and effective under both decrees. If such provision is to be considered a part of the Florida decree alone and enforceable only under that decree, there is a possibility that the property now under jurisdiction of the Maryland courts to secure your Petitioner in payments of alimony will be removed from the jurisdiction of the Maryland Court, and thus render your Petitioner totally unsecure as to future payments of alimony. This uncertainty arises due to the fact that we do not know whether the Maryland Court will enforce compliance with a support and maintenance provision of an out-of-state court as to future payments under such provision. There is no ruling of the Maryland Court of Appeals on this point, and there are authorities in Connecticut, Massachusetts, New Jersey and other States opposed to the equitable enforcement of future installments of alimony due to the lack of finality of such decree. *German v. German*, 122 Conn. 155 (1936); *Weidman v. Weidman*, 274 Mass. 118; *Kossower v. Kossower*, 142 A. 30 (N. J.); *Grant v. Grant*, 64 App. D. C. 146; *Mayer v. Mayer*, 154 Mich. 386. Hence, if the Maryland Court should rule that it can no longer enforce the support and maintenance provision as to future installments as such provision now falls under the Florida decree and thereby releases the property now held within the jurisdiction of the Maryland Court, Mrs. Johnson's right to alimony as to the future will be rendered for all practical purposes ineffective, as she would then have to pursue the said James N. Johnson from state to state in order to sub-

ject him to continued liability under the support and maintenance provision. Such a burden on your Petitioner would be insurmountable.

If the support and maintenance provision is considered as enforceable merely under and by virtue of the Maryland decree, the Maryland Court, if the Florida divorce is considered valid, will vacate that provision. Under the laws of Maryland, a wife is only entitled to alimony if she is entitled to a divorce. In *Winkle v. Winkle,* 176 Md. 167 at page 169, 4 A. 2d 128, it is said:

> "* * * In order to entitle a wife to such an allowance (alimony), the facts in the case must be such as would entitle her to either a divorce a vinculo matrimonii, or a mensa et thoro, and the court allowing alimony can only do so upon such allegations and proof as would justify a granting of a divorce".

However, a spouse against whom an a vinculo divorce has been granted is no longer entitled to a divorce in her own right, as there is no longer a marital status which can be acted upon. Hence, a woman in such a position is no longer entitled to alimony payments. *Zuckerburg v. Zuckerburg, supra.* In brief, an a vinculo divorce in favor of the husband terminates the husband's liability to make such payments. As the Maryland Equity Court has jurisdiction to modify or vacate an alimony and maintenance provision granted by it, (*Winkle v. Winkle,* 178 Md. 489 at page 501, 15 A. 2d 914), the Maryland Court would, if the Florida decree is considered valid, rescind its support and maintenance provision which it had granted in favor of Mary B. Johnson.

As the property of dower and rights of expectancy are destroyed if the Florida decree is allowed to stand, and as uncertainties exist as to your Petitioner's continued right to support and maintenance, the Petition for a Writ of Cer-

tiorari should be granted in order to determine whether the Florida Court had sufficient jurisdiction over the marital status in question in order to dissolve that marital status and the property rights flowing therefrom.

CONCLUSION

For the reasons assigned above, we submit that the Petition for a Writ of Certiorari filed with this Court should be granted.

Respectfully submitted,

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